

The Honorable James L. Robart

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STARK, *et al.*) Case No. CV06-1719 JLR
Plaintiffs,))
v.))
THE SEATTLE SEAHAWKS, FOOTBALL,))
NORTHWEST, LLC, *et al.*,))
Defendants.))

SEAHAWKS DEFENDANTS' REPLY
IN SUPPORT OF THEIR MOTION FOR
LEAVE TO FILE A MOTION FOR
SUMMARY JUDGMENT WITHIN 90
DAYS OF THE TRIAL DATE
NOTED FOR CONSIDERATION:
May 22, 2007

Despite its length, plaintiffs' opposition does not warrant an extended response.

The issue presented is whether the Court should grant leave for the Seahawks Defendants to file a summary judgment motion, which may very well obviate the need for trial, even though trial *may* be fewer than 90 days away.¹

¹ There is now a question as to whether the motion for leave was necessary. Local Rule 16(g) requires that dispositive motions be filed no later than 90 days before the trial date. We filed the motion for leave because the (continued...)

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1 The proposed summary judgment motion addresses the issue of whether, by
 2 repeatedly presenting themselves at the gates of Qwest Field with knowledge of the pat-down
 3 requirement, plaintiffs expressly or impliedly consented to the challenged pat-downs. The
 4 facts as to that issue are undisputed, although the parties dispute the legal significance of those
 5 facts.

7 Plaintiffs' principal basis for opposing the requested leave is their assertion that
 8 the Seahawks' Defendants' lead counsel could have taken plaintiffs' depositions several weeks
 9 earlier. (Pls. Opp. at 5.) Plaintiffs' opposition overlooks the fact that those depositions were
 10 taken pursuant to an agreed-upon schedule that arose out of the parties' efforts to coordinate
 11 scheduling of eleven depositions in Seattle, Minneapolis, New York, and Washington over a
 12 two-week period. (Supplemental Declaration of Paul A. Ainsworth Filed in Support of
 13 Motion for Leave to File, ¶ 5.) Moreover, defendants' requested deposition dates for
 14 plaintiffs' soon after we received plaintiffs written discovery responses; the depositions
 15 occurred a little more than two weeks after plaintiffs provided available dates. (*Id.* at ¶ 4-5.)
 16 Plaintiffs are simply wrong to suggest any issue of "delay" regarding the scheduling of
 17 plaintiffs depositions.

19 Nor do plaintiffs not raise any serious suggestion of prejudice resulting from
 20 the *timing* of the filing. Nor could they reasonably do so. The motion for leave, the proposed
 21 summary judgment motion and all of the materials supporting the summary judgment motion

23 parties had jointly *proposed* a trial date of July 16, 2007, and a Stipulated Order setting the hearing for that date
 24 was entered on April 17, 2007 (*see* Docket Entry Nos. 27, 29.) We have since learned from the Court's staff that
 25 the hearing will not take place on those dates. The setting of the trial date on plaintiffs' request for a permanent
 26 injunction will be the subject of a telephone conference among counsel and the Court on Wednesday, May 23,
 27 2007.

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were filed on the last day of the discovery period. Plaintiffs also cannot reasonably claim to have been surprised or by the issues raised in the motion, for they extensively briefed the issue of consent in their motion for preliminary injunction that was filed more than five months ago. In short, neither the filing nor the timing of the summary judgment motion prejudices plaintiffs in any way.²

We do not propose to address the merits of the summary judgment motion here. Suffice it to say that we strongly believe that (if the Court does not grant our (fully briefed) summary judgment motion addressing state action,) this case can and should be resolved by summary judgment on the issue of consent -- an issue for which plaintiffs bear the ultimate burden of proof. *Pavao v. Pagay*, 307 F.3d 915, 918-19 (9th Cir. 2002). If there is any question about the seriousness of our motion for summary judgment or the undisputed nature of the dispositive supporting evidence, we urge the Court simply to read the supporting memorandum, which is shorter than plaintiffs' opposition to the motion for leave.

CONCLUSION

There simply is no reason for the Court or the parties to be burdened with a trial in this matter if a dispositive issue, as to which the facts are undisputed, can be resolved on summary judgment. If the resources invested in their twelve-page opposition to our motion for leave had instead been spent preparing an opposition to the summary judgment motion, the latter motion would soon be fully briefed and ready for decision.

² The Seahawks Defendants do not object to extending the noting date for the summary judgment motion on consent to June 8, 2007, if necessary to address plaintiffs' asserted concerns about their response time.

Given the absence of any prejudice to plaintiffs and the fact that summary judgment motions are appropriate to determine the legal significance of undisputed facts, the Seahawks Defendants respectfully request that their motion for leave to file the attached motion for summary judgment be granted, that plaintiffs be ordered to respond to the motion on the schedule set forth in that motion, with their opposition due on May 29, 2007, and that the summary judgment motion on consent be noted for consideration on June 1.

Respectfully submitted,

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May 21, 2007

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CERTIFICATE OF SERVICE

I HEREBY certify that on May 21, 2007, I electronically filed the foregoing Reply in Support of the Seahawks Defendants Motion for Leave to File a Motion for Summary Judgment Within 90 Days of the Trial Date using the ECM/CMF system which will send notification of the filing to Timothy G. Leyh, Esq. and Christopher T. Wion, Esq. of Danielson Harrigan Leyh & Tollefson LLP, 999 Third Avenue, Suite 4400, Seattle, WA 98104, Counsel for Plaintiffs, and John J. Dunbar of Ball Janik LLP, 101 Southwest Main Street, Suite 1100, Portland, OR 9720, Counsel for Defendants the Washington State Public Stadium Authority and Lorraine Hine, in her official capacity as Chairperson of the Washington State Public Stadium Authority board of directors.

/s/ Paul A. Ainsworth

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